

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application of  
Fusion Telecommunications International,  
Inc., and Fusion NBS Acquisition Corp., and  
Network Billing Systems, LLC (U6067C) to  
Authorize the Transfer of Control of  
Network Billing Systems, LLC (U6067C).

Application 12-06-009  
(Filed June 15, 2012)

**DECISION AUTHORIZING TRANSFER OF CONTROL****1. Summary**

Applicants Fusion Telecommunications International, Inc. (Fusion), Fusion NBS Acquisition Corp. (Newco) and Network Billing Systems, LLC (NBS) are granted approval pursuant to Pub. Util. Code § 854(a) to consummate a transaction whereby Newco will acquire direct control, and Fusion will acquire indirect control, of NBS (a competitive local exchange carrier and non-dominant interexchange carrier) pursuant to the Membership Interest Purchase and Sale Agreement by and among Fusion, Newco, NBS, Jonathan Kaufman and Christiana Trust as trustee of LK Trust (the Agreement). Application 12-06-009 is closed.

**2. Parties to the Transaction**

Fusion Telecommunications International, Inc (Fusion) is a publicly-held Delaware corporation. Formed in 1997, Fusion is a provider of Internet Protocol based digital voice and data communications services to corporations and carriers worldwide. Fusion's services include local, long distance, and

international Voice over Internet Protocol services and other enhanced communications services and features. Currently, Fusion does not hold authorization to provide intrastate telecommunications services in any state, but is authorized by the Federal Communications Commission (FCC) to provide interstate and international telecommunications services.

Fusion NBS Acquisition Corp. (Newco) is a holding company created for the purposes of the transaction described in the application. Newco is a wholly owned direct subsidiary of Fusion. Newco will not conduct any business operations.

Network Billing Systems, LLC (NBS) is a non-dominant interexchange carrier and competitive local exchange services carrier regulated by this Commission which provides resold telecommunications services in California. NBS was originally granted a certificate of Public Convenience and Necessity (CPCN) by this Commission as a non-dominant interexchange carrier (resale services only) pursuant to Decision (D.) 98-09-088 issued on September 28, 1998. NBS's CPCN was later expanded to include certification as a competitive local exchange carrier (resale services only) pursuant to D.11-09-055 issued on September 15, 2011.

### **3. Description of the Proposed Transaction**

Pursuant to the Agreement, (1) Newco will acquire all of the outstanding equity of NBS and (2) Fusion will thereby obtain indirect control of NBS. No public utility assets of NBS will be transferred to another entity as part of the transaction. Following consummation of the transaction, NBS will be a wholly owned direct subsidiary of Newco and a wholly owned indirect subsidiary of Fusion. The current customers of NBS will remain customers of NBS immediately following the transaction. Accordingly, the transaction will be

seamless and transparent to NBS customers, who will continue to enjoy the same rates, terms and conditions of service as they do prior to closing. Any future changes to the rates, terms and conditions of service will be undertaken pursuant to the customers' contracts and applicable law. The only immediate change resulting from the transaction will be that NBS will be owned directly by Newco and ultimately by Fusion. The application is unopposed.

#### **4. Discussion**

The primary standard by which the Commission reviews whether a transaction should be approved under Pub. Util. Code § 854(a), is whether the transaction will be "adverse to the public interest."<sup>1</sup> As part of its determination, and where a company acquiring control of a certificated telecommunications carrier does not possess a CPCN in California, the Commission applies the same requirements that govern a new applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Specifically, the company must demonstrate a minimum of \$25,000 in cash or cash equivalent and demonstrate adequate technical expertise in telecommunications or a related business.

The applicants have provided information that reflects that the proposed change in ultimate ownership of NBS will not adversely impact its operations or financial status. Applicants have provided information that demonstrates that the acquiring company, Fusion, has sufficient managerial and technical expertise and sufficient financial resources to operate the acquired carrier.

Information provided about Fusion's management team reflects its significant experience in the telecommunications industry. Applicants also state

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<sup>1</sup> See D.03-12-033 at 6; D.01-06-007 at 15.

that to the best of their knowledge, no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, et seq. of the California Business and Professions Code, or for any actions which involved misrepresentations to consumers, nor is currently under investigation for similar violations. In addition, applicants have represented that there will be no change in NBS's management, operations, and service offerings and thus the transaction will not affect NBS's operations. Thus, the transaction satisfies the Commission's technical requirements.

As for financial qualifications, the applicants have attached consolidated financial statements of Fusion in the form of excerpts from its most recent SEC Form 10-Q. Accordingly, the transaction meets the requisite financial requirements and there is no basis to find that the transaction will adversely affect NBS's financial status.

We find that Applicants have demonstrated that Fusion has the financial and technical qualifications to acquire NBS.

We also find that the unopposed transaction is consistent with the public interest. There will be no immediate changes to NBS's direct management or the service that NBS provides as a result of the transfer. Applicants represent that NBS will continue to operate in the same manner after the transaction is completed as it operates today. The applicants also assert that there will be no

interruption or disruption of service to customers. The transaction will thus be seamless for NBS's customers. Finally, the applicants note that the transfer of control will enable NBS to become a stronger competitor and allow it to compete with other, larger telecommunications providers in California. Increased competition will benefit consumers and the telecommunications marketplace. Accordingly, we find that the transaction is consistent with the public interest.

## **5. California Environmental Quality Act Compliance**

The application proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The proposed transaction does not constitute a "project" under California Public Resources Code, Section 21000, et. seq.

## **6. Waiver of Comment Period**

The application was noticed on July 12, 2012. No protests were filed. This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **7. Categorization and Need for Hearings**

In ALJ-Resolution 176-3297, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were necessary. Based on the record, the Commission concludes that a public hearing is not necessary, and the preliminary determinations in ALJ-Resolution 176-3297 are altered accordingly.

## **8. Assignment of Proceeding**

Catherine J.K. Sandoval is the assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

**9. Request to File Under Seal**

Pursuant to Rule 11.4, applicants filed a motion for leave to file Exhibits A and F to the application as confidential materials under seal. Applicants represent that the information is competitively sensitive and proprietary and disclosure could place them at an unfair business disadvantage if disclosed. The motion is unopposed. We grant Applicants' motion to treat Exhibits A and F to the application as confidential.

**Findings of Fact**

1. Fusion is a publicly-held Delaware corporation.
2. Newco is a wholly-owned direct subsidiary of Fusion.
3. NBS is a non-dominant interexchange carrier and competitive local exchange services carrier regulated by this Commission which provides resold telecommunications services in California.
4. The applicants have demonstrated that they have sufficient financial resources and the technical expertise to operate as a provider of resold telecommunications services.
5. No new construction is being proposed in the application.
6. No one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was: previously associated with a telecommunications carrier that filed for bankruptcy; was sanctioned by the FCC or any state regulatory agency for failure to comply with any regulatory statute, rule, or order; or was previously associated with any telecommunication carrier that has been found either civilly or criminally liable by a court of appropriate jurisdiction for a violation of Section 17000, et seq. of the California Business and Professions Code, or for any actions which involved

misrepresentations to consumers, nor is currently under investigation for similar violations.

7. The Applicants have filed a motion for leave to file under seal confidential materials in Exhibits A and F.

8. There were no protests to the application.

9. No hearings are necessary.

### **Conclusion of Law**

1. The Commission applies the same requirements to a request for approval of an agreement for the indirect transfer of control of providers of local exchange, intraLATA toll, and interexchange services, as it does to an initial applicant for authority to provide such services.

2. Fusion meets the Commission's requirements for an acquiring company of an authorized provider of local exchange and interexchange telecommunications services.

3. The indirect transfer of control of NBS proposed in the application would not be adverse to the public interest.

4. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

5. The application should be approved.

6. The matter is uncontested, and the decision accordingly should be effective on the date it is signed.

**O R D E R****IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 854 (a), the indirect transfer of control of Network Billing Systems, LLC (U6067C) to Fusion Telecommunications International, Inc., in accordance with the documents and agreement submitted in conjunction with Application 12-06-009, is authorized.
2. Applicants' unopposed motion to file confidential documents in Exhibits A and F to the application is granted. The information will remain under seal for a period of two years after the date of this order. During this two-year period, this information will remain under seal and may not be viewed by any person other than the assigned Commissioner, the assigned Administrative Law Judge, the Assistant Chief Administrative Law Judge, or the Chief Administrative Law Judge, except as agreed to in writing by the Applicants or as ordered by a court of competent jurisdiction. If Applicants believe that it is necessary for this information to remain under seal for longer than two years, Applicants may file a new motion at least 30 days before the expiration of this limited protective order.
3. No hearings are necessary.
4. Application 12-06-009 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.